

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PharmacyChecker.com LLC,

Plaintiff,

vs.

National Association of Boards of
Pharmacy et al.,

Defendants.

Civil Action No. 7:19-cv-07577-KMK

**PharmacyChecker.com's
Memorandum of Law Supporting
Motion to Permanently Seal
Documents**

Judge Kenneth M. Karas
Magistrate Judge Paul E. Davison

Plaintiff PharmacyChecker.com respectfully requests an order sealing portions of defendants' pre-motion summary judgment letter and associated exhibits, pre-motion *Daubert* letter and associated exhibits, and plaintiff's responses thereto and associated exhibits. Dkts. 233, 235, 238–239.

The disclosure of these documents, which were previously filed under conditional seal, would cause injury to plaintiff PharmacyChecker.com's business by exposing confidential and competitively sensitive business information to the general public. PharmacyChecker.com therefore requests that the Court permanently seal these conditionally sealed materials.

ARGUMENT

While courts presume a public right of access to public court proceedings, that right is "not absolute," and the Court has discretion to seal confidential materials. *Mirlis v. Greer*, 952 F.3d 51, 59 (2d Cir. 2020) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978)). In evaluating whether to grant a sealing request, the Court must evaluate several factors: (1) whether the document qualifies as a judicial

document; (2) the weight of the presumption of public access; and (3) whether any countervailing reasons outweigh the right of public access to the judicial document. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). This balancing is a fact-intensive exercise is subject to review for abuse of discretion. *United States v. Amodeo*, 71 F.3d 1044, 1053 (2d Cir. 1995).

Even assuming the first two factors favor a presumption of public access, there is a countervailing reason that outweighs the right of public access here: the confidential materials reflect sources of non-public, competitively sensitive business information. Documents that reflect, for example, sales figures, confidential business plans, trade secrets, or details regarding a company’s relationships with its suppliers or customers are all appropriately restricted from public access. *See, e.g., In re New York Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 410 n.4 (2d Cir. 2009) (“When litigation requires the disclosure of trade secrets, the court may disclose certain materials only to the attorneys involved.”); *Gate Guard Servs. L.P. v. Solis*, No. V-10-91, 2012 WL 4625679, at *2–3 (S.D. Tex. Sept. 30, 2012) (sealing client identities and marketing strategy documents); *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2013 WL 163779, at *4, *9 (N.D. Cal. Jan. 15, 2013) (sealing documents relating to parties’ strategies, competitive positions, and business operations). All of the information plaintiff seeks to have permanently sealed are such competitively sensitive business information that is routinely subject to sealing.

CONCLUSION

For the foregoing reasons, plaintiff respectfully requests that the Court grant the motion to permanently seal the conditionally sealed materials.

Respectfully submitted,

DATED: May 2, 2022

BONA LAW PC

Plaintiff's request to permanently seal the conditionally sealed materials is overbroad. Plaintiff seeks to seal the entirety of over 20 exhibits (and quotations thereto) on the basis that the exhibits contain confidential, competitively-sensitive information. However, the Court finds that any such concerns can be handled via the redaction of any such information within the exhibits, rather than fully sealing the entire exhibits. Plaintiff is to propose redactions by no later than May 13, 2022.

SO ORDERED


KENNETH M. KARAS U.S.D.J.

5/6/22

By:

/s/Aaron R. Gott

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CERTIFICATE OF SERVICE

I, Lisa Mittwol, hereby certify that on this 2nd day of May 2022, I caused a copy of PharmacyChecker's Memorandum of Law Supporting Motion to Permanently Seal Documents be served upon counsel of record via the Court's electronic filing system.

A handwritten signature in cursive script that reads "Lisa Mittwol". The signature is written in black ink and is positioned above a horizontal line.

LISA MITTWOL